

Rural Housing Service, USDA

§ 3565.453

Agency fails to respond to the lender's proposal or advise the lender to make revisions to the plan that was submitted, the liquidation plan will be approved by default, and the 90 calendar day period for interest accrual will commence.

(b) In the event of a default involving a loan to an Indian tribe or tribal corporation made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 *et seq.*), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

[67 FR 16971, April 9, 2002, as amended at 70 FR 2932, Jan. 19, 2005]

§ 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 calendar days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender, in writing, whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Satisfactory proof of the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger or equivalent which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(3) A full and complete list of all collateral including any personal and corporate guarantees.

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

(i) Obtaining an appraisal of the collateral;

(ii) Acquiring and disposing of all collateral;

(iii) Collecting from guarantors;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(5) Necessary steps for protection of the tenants and preservation of the collateral.

(6) Copies of the borrower's latest available financial statements.

(7) Copies of the guarantor's latest available financial statements.

(8) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(9) A schedule to periodically report to the Agency on the progress of liquidation.

(10) Estimated protective advance amounts with justification.

(11) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(13) Any legal opinions supporting the decision to liquidate.

(14) The lender will obtain a complete appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. In order to formulate a liquidation plan, which maximizes recovery, collateral must be evaluated for hazardous substances, petroleum products, or other environmental hazards, which may adversely impact the market value of the collateral.

(b) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes

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into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim with the liquidation plan if the lender expects liquidation to exceed 90 calendar days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section. The loss claim calculation will include 90 calendar days of interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, the lender submits an estimated loss claim of zero. Interest accrual will cease 90 calendar days after the date the liquidation plan is approved by the Agency.

(e) Property disposition. Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, includ-

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ing disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) Transmitting payments and proceeds to the Agency. When the Agency is the Holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or elsewhere.

[70 FR 2932, Jan. 19, 2005]

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§ 3565.455 Alternative disposition methods.

The Agency, in its sole discretion, may choose to obtain an assignment of the loan from the lender or conveyance of title obtained by the lender through foreclosure or a deed-in-lieu of foreclosure.

(a) *Assignment.* In the case of an assignment of the loan, the assignment of the security instruments or the security must be in written and recordable form. Completion of the assignment will occur once the following transactions are completed to the Agency's satisfaction.

(1) Conveyance to the Agency of all the lender's rights and interests arising under the loan.

(2) Assignment to the Agency of all claims against the borrower or others arising out of the loan transactions, including:

(i) All collateral agreements affecting financing, construction, use or operation of the property; and

(ii) All insurance or surety bonds, or other guarantees, and all claims under them.

(3) Certification that the collateral has been evaluated for the presence of contamination from the release of hazardous substances, petroleum products or other environmental hazards which may adversely impact the market value of the property and the results of that evaluation.

(b) *Conveyance of title.* In the case of a conveyance of title to the property, the lender must inform the Agency in advance of how it plans to acquire title and a timetable for doing so. The Agency will accept the conveyance upon receipt of an assignment to the Agency